EDITOR'S NOTE

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(1)

91-789

NO. 91-

Supreme Court, U.S.
FILED
OCT 17 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

GERALD E. GRUNST — Petitioner

- Versus -

UNITED STATES OF AMERICA:MANUEL LUJAN,JR.,SECRETARY OF THE UNITED STATES FISH & WILDLIFE SERVICE; UNITED STATES WILDLIFE RESEARCH CENTER,JAMESTOWN,ND;DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT — Respondent

Petition for Writ of Certiorari to the
United States Court
of Appeals for the Eighth Circuit

GERALD E. GRUNST
AS PRO SE

P.O.Box 66
POPLAR, MONTANA 59255
(406) 768-3349

AS PRO SE

QUESTION PRESENTED FOR REVIEW

What determines a Win By Default for the Plaintiff when the Defendant is properly served with a Certified Mail Summons according to 28 USC Rule 4(d)(4) and Rule 4 (c)(2)(B)(ii) and than the Defendant fails to properly respond within the 60 day limit? In essence, does the United States District Court have the authority to decide whether or not a request for a Win By Default is argumentative and then declare it moat without: a hearing, an investigation or to obtain evidence in support of the Defendant's intent? Will this mean that a new precedent will be set for the Defendant's so that they will no longer have to address a Win By Default claim for the Court? In turn, I the Plaintiff contend that any Defendant claims made after the 60 day limit for a response should be declared inadmissible for the Court to review or consider.

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NO. 91-

IN THE UNITED STATES

SUPREME COURT OF THE UNITED STATES

October Term, 1991

GERALD E. GRUNST Petitioner

- Versus -

UNITED STATES OF AMERICA:MANUEL Respondent

LUJAN,JR.,SECRETARY OF THE UNITED STATES FISH & WILDLIFE SERVICE; UNITED STATES WILDLIFE RESEARCH CENTER,JAMESTOWN,ND;DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

GERALD E. GRUNST, petitions for a Writ of Certiorari to review the order of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The orders of the United States District Court at Fargo, ND.(Gerald E. Grunst V. United States of America,et al A3-89-161)Appendix N-N1 is unpublished. The orders of the United States Court of Appeals for the Eighth Circuit for the latter case - 91-1673NDF is also unpublished see Appendix P.

JURISDICTION

The order of the United States Court of

Appeals for the Eighth Circuit sought to be review was rendered on July 30,1991(Appendix at N-P). The Grunst petition for rehearing with a suggestion for rehearing en banc was denied by order of the United States Court of Appeals for the Eighth Circuit entered on September 16, 1991 (Appendix at P). The jurisdiction of this Court to review the order of the United States Court of Appeals for the Eighth Circuit is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U,S.C Rule 4(2)(B)(ii) and 4(d)(4-5)

(Appended Pursuant to Rule 14.1 (f) App.B-1)

28 U.S.C. § 2410 (b)

(Appended Pursuant to Rule 14.1 (f) App.G)

Age Discrimination In Employment Civil Rights Act of 1967 Sec 4, (a)

It shall be unlawful for an employer-(1) to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms,conditions, or privileges of employment, because of such individual's age.

Title VII 1964 Civil Rights Act as Amended,

42 U.S.C. § et Seq.;

All personnel actions affecting employees or applicants for employment..in executive agencies..and those units of the legislature and Judicial branches of the Federal Government have positions in the competitive service.. shall be made free from any discrimination based on race..sex or national origin.

STATEMENT OF THE CASE

The United States District Court,Southeastern Division, District of North Dakota, had jurisdiction pursuant to Title 18,U.S.C. § 3231.

On the 19th of October 1989, I Gerald E. Grunst the Plaintiff received E.E.O.C. Judge Steinberg's written decision from my Hearing and that of the Dept. of the Interior. The letter of instruction clearly stated that I had 30 days in which to appeal the Hearing decision to the U.S. District Court at Fargo, ND.,see Appendix A. Please note: the 18th of November would have been my last day in which to appeal the E.E.O.C Hearing decision.

On November 1st, 1989 I the Plaintiff requested cover sheets, the proper Summons sheets and instructions, by both letter and telephone from the Office of the Clerk at

Fargo,ND. The letter was filed on November 6, 1989 see Appendix B. I later received all of the latter requested materials in addition to a photocopy of a small part of 28 U.S.C. Rule 4 - part B(iii) through (e) from the Office of the Clerk. Rule 4 had the letter (d) and the number (5) marked in pink marker. When I telephoned the Clerk Recorder's Office I was told that I could serve my Complaint and Summons to the U.S. District Attorney's Office by Certified Mail. Thus, I was instructed by both mail and letter to follow the Clerk Recorder's instructions according to their marked photocopy of the 28 U.S.C. Rule 4 (B)(iii) - (e) rule, see Appendix B1.

I promptly filled out the cover sheet along with my complaint and sent it back to the Clerk Recorder's Office, see Appendix C. I later received the properly filled out Summons for each Defendant from the Clerk's Office. I immediately filled out each Summons and mailed it along with my Complaint to each Defendant. Each of these Complaints and Summons were sent by Certified Mail to: the

U.S. Attorney's Office at Fargo, ND., each Defendant named on the Cover Sheet and the U.S. Attorney General's Office in Wash.,D.C., see Appendix D for Summons. This was all done on November 10,1989 as Rule(d) had directed-by Certified Mail Delivery. The Summons and the Complaints were all received by the above mentioned parties within the 30 day limit. The signed date for each received Certified Mail was all made on November 13,1989 see Appendix E. Two days later on November 15, 1989, the U.S. District Attorney's Office wrote a letter to myself the Plaintiff and inferred that the Summons had not been properly served by Certified Mail. And that the only proper method was by the Marshall's Office, see Appendix F. The First Assistant District Attorney referred to code 28 U.S.C.§ 2410(b) which only had to do with "Actions affecting property in which United States has Lien" see Appendix F and G. Respectfully, this code or rule had nothing to do with my case whatsoever. Since than, no further codes or rules had been

offered, to me the Plaintiff, in order to justifie the District Attorney's letter - either by correspondence or in her Court briefs. Please note: I did not receive the written letter until November 22, 1989. I would have received the letter on November 17, except that I was out of town on a U.S. Naval Reserve Training session. Immediately upon receiving the letter, I than request the U.S. District Attorney's Office to be Summoned by the U.S. Marshall's Office through the Clerk Recorder's Office, see Appendix I. The U.S. District Attorney's Office was finally summoned a second time on November 28 by the U.S. Marshall's Office, see Appendix J. Respectfully, the District Attorney's Office was served the second summons 39 days after October 19, 1989. In addition,I had never requested an extension of the 30 day limit.

On January 17,1990 after the 60 day limit had passed from the first Certified Mail summons I than sent a letter of request for a Win By Default for I the Plaintiff, see Appendix K.

This letter was addressed to the Office of the Clerk. My reasons for my request was specific.

The U.S. District Attorney's court brief was filed in the Recorder's Office on January 25,1990,see Appendix L. Note: this court brief was filed 73 days after the first summons had been delivered or served by Certified Mail to the U.S. Attorney's Office and by 56 days from the second delivery, see Appendix M. No request for an extension had ever been filed from the District Attorney's Office to the Clerk Recorder's Office.

I received a decision (which was part of many District Court decisions) from the U.S. Magistrate on March 27,1990. The WIN BY DEFAULT request made by myself to the U.S. District Court for dismissing the Case was declared argumentative and deemed moot. In addition,I the Plaintiff, was to be given more time in order to file an"Amended Complaint". This Complaint was turned into the Magistrate's Office on June 4 at her request. I was instructed not to send a copy to the U.S.D.A.

Office nor any of the Defendants since this matter was being taken care of by her Office. I was also told that my motion for a Default judgement was being overruled by the U.S. District's Attorney's filing for a Rule 12 submitted within her Court brief on January 25,1990. Note: this Court brief was submitted 13 days too late. Thus, the Magistrate had lumped all of these requests into one large decision - that of being declared moot regardless of their chronological filing dates, see Appendix N.

At this point in time, I only wish to address my reasons for requesting a Win By Default. I will try not to address anything past the U.S. Magistrate's final decision on March 27, 1990. However, I would like to note that I filed the Amended Complaint & relief request in the Magistrate's Office by 6/4/90. Anything filed past January 17,1990 should be declared null and void for a Win By Default request, except maybe my filed complaint for relief. Respectfully,if anything were to be discussed

after this - it might distract or confuse this issue. Basically, it would be like placing the cart before the horse and than trying to race with a handicap. Please Note: dismissial of my District Court came on 7 January 1990, see Appendix N1.

REASONS FOR GRANTING WRIT

I,Gerald Grunst, the Plaintiff will show by discussion that the first summons delivered on November 13,1989 to the U.S. District Attorney's Office at Fargo,North Dakota was properly done by Certified Mail. And that the second summons made on November 28,1989 to the same Office was irrevalent,unnecessary and seemingly improperly done. Hence, if only the first summons is accepted by this Supreme Court than a decision for a WIN BY DEFAULT for the Plaintiff respectfully should be rendered by this same Court. In addition,the decision made by the U.S. District Court in Fargo,ND. against a Win By Default for the Plaintiff should be striken down by this same Supreme Court. In essence, I shall attempt to be analytical and chronological in order to reach this conclussion.

When the Clerk Recorder's Office at ND. issued me Cover sheets,properly filled out Summons and instructions along with a photocopy of 28 U.S.C. Rule 4 - 2(c) through (e). the page 19 was marked with a pink marker on (d) Summons and Complaint: Person to be served and (4) Upon the United States by delivering a copy of the summons... No other instructions or rules were issued to me. The word delivering or delivered in Rule 4(d) is open to interpretation as I shall now show. In fact, the word delivery is not defined within the 28 U.S.C. Code or in Rule 4. Black's Law Dictionary describes delivery in this manner: "The act by which the res or substance thereof is placed within the actual or constructive possession of another. It is not necessaary that delivery should be made by manual transfer -reference to Jones V.Young,Tex Civi app 539 S.W.,2nd 901, 904. "One of the exceptions to the paral services which permits introduction of evidence to the effects

that document was delivered on conclussion that something be done and it is understood that document does not become operative until such actions be taken." Ibid. Webster's Dictionary defines delivery in this manner: A handing over: transfer, A distributing as of mail or something delivered and Roget's Thesaurus exchanges such words with deliver as transfer,hand,hand over and pass over to. In essence,I interpreted and followed Rule 4(d)(4) to all of these guidelines. Hówever, the photocopied instructions of Rule 4 were incomplete and I had to surmise that the rest of Rule 4 was not pertinet to my case since the Recorder's Office had officially indicated to me, by their photocopy and by a telephone conversation,that I could legally serve or deliver my summons by Certified Mail to the U.S. District Attorney's Office. This given information by the Recorder's Office was misleading to me as the Plaintiff and due to the fact that it was probably unintentional did not alter the outcome of the summons delivery. Nothing was noted on my provided photocopy of Rule 4- "by request".

Respectfully, therefore I felt that I was not obligated to follow all of this Rule 4 direction because the Clerk Recorder's Office had failed to provide me with the total photocopy of the Rule 4. In addition, 28 U.S.C. Rule 5(b) supports my definition of delivery and what it entails; "Service upon the attorney or upon a party shall be made by deliverying a copy to the Attorney or party or by mailing it to the Attorney.. at the Attorney's know address... Service by mail is complete upon mailing." Thus, delivery by Certified Mail was completed to the U.S. District Attorney's Office when the summons was signed for at their Office. Also, the District Attorney's Office admitted by their own letter, to the Plaintiff, two days later that their Office had actually recieved the first summons and the complaint. On November 22,1989, I received the District Attorney's letter addressed to me. The letter had been dictated,typed and signed by the first Assistant District Attorney, see Appendix F. The letter was dated November 15,1989 and it made

reference to my delivered summons. After stating that the U.S. District Attorney's Office had received my summons by delivery the First Assistant District Attorney made the demanding statement that the summons had been improperly served by Certified Mail and that the proper service was by U.S. Marshall. I believe that code U.S.C. Rule 4 (c) Service (2B) (ii) addresses this matter. Please let me quote these paragraphs of Rule 4, "Process, other than a subponea or a summons and complaint, shall be served by a U.S. Marshall.. a summons and complaint shall, at the request of the party seeking service or such party's Attorney, shall be served by a U.S. Marshall.. or by a person specially appointed by the Court for that purpose only..(ii) on behalf of the United States or an Officer or agency of the United States." Please note that the U,S. District Attorney's Office was required to request or ask me the Plaintiff, to be served the summons by the U.S. Marshall's Office. In the letter

dated on November 15,1989 and addressed to I the Plaintiff, the U.S. District Attorney's Office failed to request that the summons be delivered by the U.S. Marshall's Office. I would ask you to observe the letter and note that the first Assistant District Attorney makes a demanding statement,and gives some advice and information. This statement was not a request because a request according to Webster's Dictionary is "an asking for something .. the state of being asked for..to ask for usually in a polite or formal way". May I suggest that Rule 4(2)(B)(ii) was still not in effect because the Plaintiff was not required in this case to have the U.S. District Attorney's Office be served by the U.S. Marshall's Office. Respectfully, I was the only person who had officially requested that the Clerk Recorder make arrangements for delivery. Therefore, the first summons delivered by Certified Mail was still valid and still in effect while the second summons should of been considered moat by the District

Court not only because it was not requested but also by the fact that it was not delivered to the U.S. District Attorney within the 30 day limit. Also, I never requested an extension of this 30 day limit. In other words, the first summons delivered by Mail on November 11 was still valid and still in effect because it had never been properly refuted within the 60 day limit by the U.S. District Attorney's Office. Respectfully, the District Attorney's Office had failed to make a request, to I the Plaintiff, that her Office be served by the summoner - the U.S. Marshall's Office.

In the same letter dated on November 15, 1989 the District Attorney made reference to Code 28 U.S.C. Section 2410 (b). In fact,the District Attorney justified their demanding statement of fact with this unrelated U.S. Code. This Code is irrelevant to my case since it only deals with "actions affecting property on which United States has lien."-

see Appendix F and G. This had absolutely no meaning in this Court case. If it did than I could easily counter with the code 28 U.S.C. Rule 5(b) "Service upon the Attorney or upon a party shall be made by delivering a copy to the Attorney or party last known address... Service by mail is complete by mailing." When the Assistant District Attorney quoted misleading information(28 U.S.C.2410(b)),to I the Plaintiff, she may have intended to delay the serving of that same summons or to attempt to have my case dismissed by the District Court because of the 30 day limit infraction rule. Essentially, this delay did postpone or delay her filing of her later Court brief for the District Court. Hence,her Office did gain more time for her preparations and defense of this case in question. The lateness of her filed brief to the Court on January 25,1990 seems to atest to this fact. The District Attorney did need additional time to conferr with the former E.E.O. Defense Hearing Attorney,about how to precede and

prepare her brief, and to obtain additional documents & information. The district Attorney's Office inadvertently gained more time for an unearned extension of this Court case without having to Officially request or justifie her reasons or actions to the District Court. In this case the codes,28 U.S.C. Rule 4(2)(B)(ii) and 28 U.S.C.§2410 (b) are quit specifice, clearly stated and quit different. Respectfully, the First Assistant District Attorney seems to be a well trained Professional Attorney - her well prepared Court briefs seem to atest to this statement. How than could this Attorney not of known about the different contents or values of the latter U.S.C. codes in question? In addition, the U.S. Magistrate had simply assumed that she had unintentionally made a mistake and ordered the Win By Default argumentative and moot. Otherwise, the U.S. Magistrate would have requested the District Attorney to justifie her misleading letter; to the Court and/or the Plaintiff. Hence, the Magistrate must have concluded that the

Plaintiff's request was argumentative without the Assistant District Attorney having to justifie her misleading letter. In fact the District Attorney's Office has never justified her statements in a Court of law. This matter concerns me because the U.S. Magistrate has now set a precedent for any future Win By Default claims. Will the Defendant no longer have to justifie his intent or actions and will each Plaintiff be at the mercy of each Court's preconceived conclussions - without the benefit of any Court justification? Will an argumentative declaration from the Court simply dismiss any Plaintiff Win By Default requests when it becomes difficult for the Court to determine whether the Defendant's actions were intentional or not? Either way, I believe that the Defendant must be held responsible for their actions and that the U.S. District Attorney's Office must share in that same responsibility. Thus,the written letter in question by the Assistant District Attorney signed on November 15,1989

must speak for itself. If the District Attorney's Office had any doubts concerning the Assistant District Attorney's actions or performances,at any time, than that Office had the responsibility of correcting the letter or removing her from this particular case.

May I suggest that the main purpose of delivering a summons is that the party or parties become aware of their responsibilities to the Courts and to the Plaintiff. When the Assistant District Attorney did not respond until 73 days after the summons was delivered, my Civil rights were violated. In this Civil case the District Attorney's readily admitted receiving the summons and complaint on November 13 from their letter. This delivery was also verfied by my Certified Mail receipts with signature of a Ms. Carol Johnson who received the document in lieu of the Assistant District Attorney. Thus, by 28 U.S.C. Rule 4(d(4) she was a proper recipient of the summons and complaint in

question and the 2nd delivery was irrevalent and improperly done because it never was requested by the U.S. District Attorney's Office. In addition, the U.S. Magistrate and the District Judge based their entire decision on the material entered from the District Attorney's Court brief. Chronoligically, this matter should of been declared a Win By Default for the Plaintiff because the brief in question was inadmisibly submitted for discussion and evidence and because the U.S. Magistrate and the Honorable Judge in turn were unduly swayed by this same brief. If a Win By Default had been properly rendered by the U.S. District Court chronologically Rule 12 would of not been addressed by the Court. In addition,the E.E.O.C. already has a set policy for settlement discriminated plaintiffs which includes any prebargaining requests. Hence, a letter of Plaintiff request was offered by the Department of Interior on March 16,1987, see Appendix O. This E.E.O.C. code cannot

be altered unless directed to by the U.S. Courts. I also submitted an Amended Complaint for relief to the U.S. District Magistrate. This was done upon her request in the name of the District Court, see Appendix O-1. The latter letter for relief was submitted in addition to the already submitted E.E.O. written letter by Mr.Hicks

In essence, the simple statement,in my complaint, that I was discriminated against because of my age (43) and my sex was never legally disputed or legally addressed because of the 13 day lateness of the District Attorney's Court brief or argument. I feel that this simple statement made in my complaint was enough for the District Court to declare that I was discriminated against. Also, the District Attorney's Office never Officially asked the U.S. District Court for an extension. In addition,I did explain in my Amended Complaint why I should have been granted a Civil Court case because: I was a member of a protected group,I applied for and was qualified for the Librarian position for

which the employer was seeking applications, despite my qualification I was rejected and after my rejection the position remained open and the employer continued to seek applications see McDonnel Douglas Corp.v Green, 411 U.S. 792; Furnco Construction Corp.vWaters,438 U.S. 567 and Texas Dept.of Community Affairs v Burdine,450 U.S.:248.

Respectfully, by due process of the law I would like to pose a Rhetorical question to this Court. Why have I the Plaintiff been obligated to follow a strict guideline of the U.S. Codes and Regulations to the letter of the law - when the U.S. District Attorney's Office and the District Court hasn't had to do so in turn? Aren't the legal points of the Federal Codes and Regulations for all concerned parties and must be dully enforced upon all parties - not just a few? I am requesting that you now enforce this U.S. Federal Code 28 U.S.C. Rule 4 to the fullest and grant me a Win By Default. I further request that all District Court decisions,

judgements and court briefs entered after January 17,1990 to the District Court be declared null and void, except my Amended Complaint and Request for relief.

CONCLUSSION

The granting of a dismissal for the Defendant based on the Title 28 U.S.C. Ruel 12 (b)-(e) by the District Court conflicts with the Plaintiff's request for q Win By Default based on Title 28 U.S.C. Rule 4(b)-(e) and Title 28 U.S.C.§2410(b). Clearly this is a special case and an important reason for granting a review, see Rule 4(B)(ii). A judgement for a Win By Default for the Plaintiff in Case A3-89-161 or 91-1673NDF would serve justice to the letter of the law for all concerned. This petition for a Writ of Certiorari should be granted.

Respectfully submitted

GERALD E. GRUNST
AS PRO SE
P.O. Box 66
POPLAR, MONTANA 59255
(406) 768-3349

APPENDIX
A through P-1
Appendix H Omitted

United States Department of the Interior
Office of the Secretary Washington,D.C. 20240

Certified Mail Oct 16 1989

Mr. Gerald E. Grunst
Post Office Box 66
Poplar, Montana 59255

Filed Nov 6,1989
Edward Klecker,Clerk

Dear Mr. Grunst:

.. By letter dated April 13,1987 the following allegation was accepted for processing:

You were discriminated against by the Fish and Wildlife Service because of your age (43) and sex (Male) when: you were not selected for the Librarian,GS-1410-7/9, position at the Northern Wildlife Research Center.

..On Oct.30,1987, you requested a hearing to be conducted by the E.E.O.C. followed by a final agency decision.

We have reviewed and analyzed the entire file on your complaint, including..the hearing transcript and the Administrative Judge's statement of Findings and Recommended Decision. Based upon our review,we concur with,and adopt the Administrative Judge's Recommended Decision.. We do not find that you were discriminated against as alleged in your complaint...

..If you are dissatisfied with this decision, you have the following appeal rights:

APPEAL RIGHTS..(N/A)..

CIVIL ACTIONS

In lieu of an appeal to the Commission, a Civil action may be filed in an appropriate United States District Court within 30 calender days of receipt of the decision...

If a civil action is filed, the appropriate Department or Agency head must be named as the defendant. Failure to do so may result in the loss of any judicial redress a complaint may be entitled to. The Secretary of the Department of the Interior is Manuel Lujan,Jr.

Sincerely,
/s/ Carmen,R.Maymi,Director
Office for Equal Opportunity

Attention:Mr. Ralph Hanson
Office of the Clerk
United States District Court
P.O. Box 870
Fargo, North Dakota 58107

Filed 6 Nov 1989
Edward Klecker
Clerk

Dear Sir:

I wish to submit this letter as an official request for a Civil Action court case against Mr.Manuel Lujan,Jr.,Secretary of the United States Department of the Interior-U.S. Fish and Wildlife Service,U.S. Northern Prarie Wildlife Research Center-Jamestown, North Dakota. In addition, I also wish to submit this letter as a request to name the Director of the Office of Personnel Management, Washington, D.C. as a secondary Defendant...

I feel that on 3 October 1986, I was discriminated against by the U.S. Fish and Wildlife Service because of my age(43 at the time) and sex (Male) when: I was not selected for the GS-1410-7/9 Librarian position at the Northern Wildlife Research Center at Jamestown, North Dakota.

Between 21-23 March 1989, a hearing was held at the Jamestown, North Dakota-U.S. Research Center with Judge Steinberg E.E.O.C presiding.

I received the result of this hearing on 19 October 1989 and found it unacceptible. It was declared in the letter of results that..I had 30 days to file a Civil Action suit against the Department of Interior. I have chosen the latte

... (next 2 paragraphs N/A)...

I will send the Civil Cover sheet when I've had a chance to receive the form from your Offic

Sincerely
/s/Gerald Eugene Grunst
P.O. Box 66
Poplar, Montana
59255

Phone #406-768-3349

28 U.S.C. Rule 4 (c) (2) (B) (iii) - (e)

(iii)Pursuant to an order issued by the court stating that a United States Marshall...is required to serve the summons and complaint.. ...(d) Summons and Complaint.. The summons and complaint shall be served together... Service shall be made as follows: ... (4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an assistant United States Attorney...and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States...,and in any action attacking the validity of an order of an officer or agency of the United States...

(5)Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency...

(e)Summons: Service Upon Party Not Inhabitant of or Found Within State...

CIVIL COVER SHEET

Filed 7 Nov 1989
Edward Klecker,Clerk

I PLAINTIFFS

GERALD E. GRUNST
P.O. BOX 66
POPLAR,MONTANA
59255

DEFENDANTS

MR.MANUEL LUJAN,JR.UNITED STATES DEPT.OF THE INTERIOR U.S. NORTHERN WILDLIFE RESEARCH CENTER AT JAMESTOWN,ND.& DIRECTOR OF OPM

(I(c) - III N/A)...

IV.CAUSE OF ACTION AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 Section 4. (A)(1) &(B) and TITLE VII 1964 CIVIL RIGHTS ACT. 703 (b)(1) I feel that I was discriminated against by the Fish and Wildlife Service because of my age(43) at the time & my sex(male) when: I was not selected for the GS 1410 7/9 Librarian position at the NPWRC at Jamestown, ND.

V.NATURE OF SUIT..Civil Rights 442 Employment

...VII. REQUEST IN COMPLAINT... DEMAND Retro active pay...

...(VIII. RELATED CASE(S)- Judge Bernard Steinberg Docket Number FWS 87-o11 EEOC. Received results on 19 Oct. 1989.

Date: 3 November 1989

Signature of Attorney of Record
/s/Gerald E.Grunst...

C

UNITED STATES DISTRICT COURT

SOUTHEASTERN DIVISION DISTRICT OF NORTH DAKOTA

Gerald Eugene Grunst,
Plaintiff

V

United States of America,Mr. Manuel Lujan,Jr.,Secretary of the U.S.Dept. of Interior U.S. Fish & Wildlife Service, Research Center-Jamestown, North Dakota & Director of OPM, WASH., D.C.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: A3-89-161

TO: ALL OF THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to file with the clerk of this court and serve upon

Plaintiff's Attorney

Gerald Eugene Grunst
P.O. Box 66
Poplar, Montana 59255

answer to the complaint which is herewith served upon you within (60) Sixty days after service of this summons upon you exclusive of the day of service. If you fail to do so,judgement by default will be taken against you for the relief demanded in the complaint.

Edward Klecker November 6, 1989
/s/ Joann Ordahl
BY DEPUTY CLERK JoAnn Ordahl

D

AO 440 (Rev.5/85) Summons in a Civil Action

RETURN OF SERVICE

... N/A

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedures.

Filed
Jan 18,1989
Edward Klecker
Clerk

CERTIFIED MAIL RECEIPT

3. Article Addressed to:
U.S. District Attorney-
North Dakota
P.O. Box 2505
Fargo, North Dakota
58102

4. Article Number
P047321060
Type of Service:
Certified ...

5. Signature - Address
/s/ Carol Johnson ...

6. Signature - Agent ...

7. Date of Delivery
11-13-89 ...

PS Form 3811,Mar.1988 U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

UNITED STATES ATTORNEY

DISTRICT OF NORTH DAKOTA

Filed 18 Jan 1989
Edward Klecker,Clerk

November 15, 1989

Gerald Eugene Grunst
P.O. Box 66
Poplar, Montana 59255

Re: Gerald E. Grunst V United States,et al...

Dear Mr. Grunst:

On or about November 13,1989,our Office received a copy of the Summons and Complaint by mail in the above captioned case. However, in order to obtain proper service on the United States,the Office of the United States Attorney must be served with the Summons and Complaint by the Sheriff's Office,or other agent for service or process,and a copy of the Summons and Complaint must be sent by certified or registered mail to the Attorney General of the United States at Washington,D.C. See Title 28, United States Code, Section 2410 (b).

If you have any question regarding this procedure, please contact me.

Yours Very Truly

GARY ANNEAR
United States Attorney

F

/s/Lynn E. Crooks
Lynne E. Crooks

First Assistant
U.S. Attorney

U.S.C. TITLE 28 § 2410

Filed 18 Jan 1989
Edward Klecker,Clerk

Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this Title for the protection of the United States may be named a party in any civil action or suit in any district court,or in any state court having jurisdiction of the subject matter-

(1) to quiet title to, (2) to foreclose a mortgage or other lien upon,..(5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims mortgage or other lien.

(b) The complaint or pleading shall set forth particularly the nature of interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and if a notice of the tax lien was filed...

Filed Nov 24,1989
Edward Klecker,Clerk

Mr. Ralph Hanson
Office of the U.S.Distric Clerk
United States District Court
P.O. Box 870
Fargo, North Dakota 58107

Dear Mr. Hanson:

On November 17,1989, I received a reply by letter concerning the summons No. A3-89-161 which was delivered to Mr.Gary Annear of the U.S. Attorney's Office by Certified mail. Since I was out of town for 6 days at the time on Naval Reserve drill, I could not respond immediately. However, I now would like to request that Mr. Gary Annear or his Office Clerk (whichever is necessary) be served a copy of my summons by the North Dakota or U.S. Marshall's office. Thank you very much for your assistance in this matter.

Sincerely
/s/Gerald E.Grunst
Gerald E. Grunst
P.O. Box 66
Poplar,Montana
59255

Phone# 406-768-3349

U.S. Department of Justice
United States Marshalls Service

PROCESS RECEIPT AND RETURN

Summons served
28 Nov 1989
Carl Weymaret,De
Court Case NUmbe
A3-89-161

Plaintiff Gerald Brunst

Defendant United States
of America, et al. Summons and Complaint

SERVE AT Mr.Gary Annear, United States
Attorney.. Fargo, North Dakota...

Send notice of service to requestion at name

and address below:

Mr. Gerald E. Grunst
P.O. Box 66
Poplar, Montana 59255...

Signature of Attorney or other Originator

requesting service on behalf of: Plaintiff
/s/ Ralph Hanson
Ralph Hanson,Depty Clerk 11-28-89

I hereby certify that I have personally served

the process described on the individual...

Gary Annear U.S. Attorney
655 1st Ave N.
Fargo, N.D.

Date of Service
11/28/89
11:30 am
/s/Carl Weymaret

Filed 18 Jan 1990 17 January 1990
Edward Klecker,Clerk

Office of the U.S. District Clerk
United States District Court
P.O. Box 870
Fargo, North Dakota 58107...

Dear Sir:

Please accept this letter as a formal request for a judgement by default. This is in reference to my case number A3-89-161 and the summons sent by Certified Mail from myself to the United States Attorney's Office - District of North Dakota...

On the 8th of November 1989, I received 5 summons from the U.S. Clerk Recorder's Office at Fargo,ND. Each summons adamently referred to Rule 4 at the bottom of page 2. I also received a photocopy of the U.S. Code, Title 28,Rule 4. From the U.S. Clerk Recorder's Office, I was instructed to follow the United States Code, Title 28, Rule 4 and the regulations associated with it. Therefore: my conclussion was that only Rule 4 applied to my case number A3-89-161 and for the delivery of each summons.

On 10 November 1989, I sent a summons by Certified Mail to... The United States Attorney-

District of North Dakota at Fargo,ND. All participating parties involved received and signed for their Certified Mail summons on the 13th November 1989. This summons was delivered according to Rule 4,Title 28 of the United States Code. Each defendant had 60 (sixty) days to fill out,sign and return their summons to the Clerk Recorder's Office at Fargo,ND. Thus,all parties but the United States Attorney's Office-District of North Dakota has submitted their response in question, within the allowed sixty (60) day limit,to the U.S. Court Recorder's Office at Fargo,ND. Consequently,I believe the U.S. Attorney's Office.. is now in default of my case.

Also in relation to this case, I received a letter on the 21 November 1989. However, the letter was dated on 15th November 1989 and it was from the U.S. Attorney's Office - District of North Dakota. Mr.Gary Annear's Office(Ms. Lynne E. Crooks, First Assistant U.S. Attorney) indicated that the summons they had received by Certified Mail was improperly served or delivered to their Office because it had to be served or

delivered by an official summoner from the U.S. Sheriff's Office. They argued that Code 28,of the U.S. Code, section 1410(b) required a U.S. Marshall's delivery instead of a summons by Certified Mail... The second summons was delivered a week later by the U.S. Marshall's Office to the U.S. Attorney's Office - District of North Dakota on 28 November 1989.

However, I have come to realize that the summons, which was delivered on 13 November 1989 to the U.S. Attorney's Office - District of North Dakota, was entirely acceptable- according to Rule 4 and that the second summons which was delivered on 28th November,was quite unnecessary and ill-requested by the U.S. Attorney's Office-District of North Dakota... I would like to call your attention to Rule 4,Summons and Complaint: Person to Be Served, which states quote "Upon the United States by delivering a copy of the summons to the United States Attorney for the district in which the actions is brought or to an assistant United States Attorney or clerical employee designated by the United States Attorney" unquote... Thus, the summons by Certified Mail

requires a signature of receivership and this was done on 13 November 1989 by the U.S. Attorney - District of North Dakota employee- Ms. Carol Johnson and verified 2 days later by letter from Mr. Gary's Annear's Office of the United States Attorney - District of North Dakota. This office also stated that I should see Title 28,U.S.C. Code section 2410(b) for support of their action. However, when I read this regulation in the U.S. Codes - I found that it only referred to quote "Actions affecting property on which the United States has lien." This regulation is totally inappropriate to my Civil Action case... Thus, I sensed that Mr. Annear's Office wanted to completely throw my case out of court by a time limit infraction... The U.S. Attorney's Office - District of North Dakota has failed to respond to their Official summons within the sixty (60) day limit. I believe that the first summons was proper and I formally request that I be granted a prevailing judgement of my case A3-89-161 by default. In addition,I would like to request that the

judgement be granted according to the U.S. Regulations regarding discrimination of age and sex.

Sincerely
/s/ Gerald E. Grunst
P.O. Box 66
Poplar, Montana
59255

Filed Jan 25,1990
Edward Klecker,Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

GERALD EUGENE GRUNST, Plaintiff	)	Civil No.A3-89-161
vs.	)	BRIEF IN SUPPORT OF MOTION
UNITED STATES OF AMERICA, et al., Defendants.	)	

Description of Action

This is a pro se discrimination action brought Gerald E. Grunst, a caucasian male over the age of 40. In the letter that the plaintiff filed with the court, he claims to have been discriminated against based on his age (43) and sex (male) when he was nonselected for a GS-7/9 Librarian position with the Northern Prairie Wildlife Research Center (NPWRC), United States Fish and Wildlife Service, Jamestown, ND ...

Dated this 25th day of January, 1990.

Respectfully submitted

Gary Annear
United States Attorney

/s/ Lynn E. Crooks

LYNN E. CROOKS
First Assistant U.S.
Attorney
P.O. Box 2505
Fargo, ND 58108-2505

Of Counsel:

Paulette Andrud
Office of Regional Solicitor
United States Department of
the Interior
Rocky Mountain Region
730 Simms Street, Suite 450
P.O. Box 25007
Golden, Colorado 80401

(Pursuant to the United States District Court for the District of North Dakota Southeastern Division for total BRIEF IN SUPPORT OF MOTION)

Filed Jan 25,1990
Edward Klecker,Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF North DAKOTA
SOUTHEASTERN DIVISION

GERALD EUGENE GRUNST, Plaintiff	)	Civil No.A3-89-161
vs.	)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM OR IN THE ALTERNATE FOR MORE DEFINITE STATEMENTS
UNITED STATES OF AMERICA, et al., Defendants.	)	

COME NOW the defendants, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and moves to dismiss the complaint for failure to state a claim upon which relief can be granted, or in the alternative, ordering the plaintiff to file a more definite statement. The within motion is based upon the files and records of the court and the attached brief in support of motion.

Dated this 25th day of January, 1990.

GARY ANNEAR
United States Attorney

/s/ Lynn E. Crooks
LYNN E. CROOKS
First Assistant U.S. Attorney
P. O. Box 2505
Fargo, ND 58108-2505
(M)

Filed Jan 25,1990
Edward Klecker,Clerk

U.S. DEPARTMENT OF JUSTICE
United States Attorney

Certificate of
Service by Mail

Gerald Eugene Grunst V. U. S.	Civil No. A-3-89-161

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the District of North Dakota and is a person of such age and discretion as to be competent to serve papers.

That on January 25, 1990 she served a copy of the attached

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM OR IN THE ALTERNATIVE FOR MORE DEFINITE STATEMENTS and
BRIEF IN SUPPORT OF MOTION

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(s) stated below, which is/are the last known address(es),and depositing said envelope and contents in the United States Mail at Fargo, ND

Addressee(s)

Gerald Eugene Grunst
P.O. Box 66
Poplar, Montana 59255

/s/ Colleen Pointer
Collenn Pointer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

GERALD EUGENE GRUNST,

Plaintiff,

vs.

UNITED STATES OF AMERICA, MR. MANUEL LUJAN, JR., SECRETARY OF THE U.S. DEPT. OF INTERIOR-U.S. FISH & WILDLIFE SERVICE, U.S. NORTHERN PRAIRIE WILDLIFE RESEARCH CENTER-JAMESTOWN, NORTH AND DIRECTOR OF OPM, WASH., D.C.

Defendants

Filed Mar 27, 1990
Edward Klecker, Clerk

Civil No. A3-89-161

ORDER

Plaintiff Gerald Grunst brought this action against the United States and several agencies and individuals, claiming that he was not selected for the position of Librarian at the Northern Wildlife Research Center at Jamestown, North Dakota, for reasons which were discriminatory on the basis of both his age (43) and his gender.

Plaintiff has filed a motion for default judgment. Defendants have subsequently filed a

N

Rule 12 motion. Therefore, the motion for default judgment has become moot.

The United States has filed a motion for dismissal for failure to state a claim or in alternative for more definite statement. Pursuant to Federal Rules Civil Procedure 12(e) the court may grant a motion for more definite statement if the complaint is "so vague and ambiguous that (the defendant) cannot reasonably be required to frame a responsive pleading." The court finds that plaintiff's allegations of discrimination are so vague and general as to make a response problematical. In addition, plaintiff's claim does not include a demand for relief. The United States argues that plaintiff's claim fails to meet the requirements of Federal Rule of Civil Procedure Procedure 8, and fails to allege facts with the particularity required in a civil rights action, and should therefore be dismissed. However, in view of the fact that the case was filed as a pro se action, the court will grant the United States' alternative motion for more

definite statement, and order plaintiff to amend his complaint to conform with the requirements of Federal Rules Civil Procedure 8, and also with the requirements for Civil rights pleadings. see, e.g., Gilbert v. School Dist. No. 50 Adams City., 485 F.Supp. 505 (D.Co.1980); Schweiker v. Gordon, 442 F. Supp. 1134,1139 (E.D.Pa. 1977).

Since the court has granted the motion for more definite statement, the motion for dismissal is mooted.

Plaintiff has requested appointed counsel. However, the court cannot determine whether appointment of counsel would be appropriate in this case until Mr.Grunst provides the court with information about his financial status. The plaintiff has been so informed by letter. The court will reserve ruling on plaintiff's request for appointed counsel until the information is received.

IT IS ORDERED:

1. The United States' motion for more definite statement is granted. Plaintiff shall

have until 30 days after the court rules on his request for appointment of counsel to file and serve an amended complaint containing a more definite statement of his claims.

2. The United States motion to dismiss is deemed moot.

3. Plaintiff's motion for default is deemed moot.

Dated: March 27,1990

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate

Filed Jan 8,1991
Edward Klecker,Clerk

UNITED STATES DISTRICT COURT

SOUTHEASTERN DIVISION, FARGO DISTRICT OF NORTH DAKOTA

JUDGEMENT IN A CIVIL CASE

GERALD EUGENE GRUNST,

V.

UNITED STATES OF AMERICA,MR MANUEL LUJAN,JR.,SECRETARY OF THE U.S. DEPT. OF INTERIOR, U.S. FISH & WILDLIFE SERVICE, U.S. NORTHERN PDRAIRIE WILDLIFE RESEARCH CENTER JAMESTOWN,ND,AND DIR.OF OPM, WASH.,D.C.

CASE NUMBER: A3-89-161

XX Decision by Court.

IT IS ORDER AND ADJUDGED that pursuant to Rules 12(b) and (e) of the Federal Rules of Civil Procedure, that the defendants' motion to dismiss is GRANTED and this action is dismissed.

January 8, 1991

Edward J. Klecker
Clerk

/s/ Anne Kuschel
(by)Deputy Clerk-Anne Kuschel

United States Department
of the Interior
FISH AND WILDLIFE SERVICE
NATIONAL ECOLOGY CENTER
2627 Redwing Road,Creekside One
Fort Collins, CO 80526-2899

Filed 4 Jun 1990
Edward Klecker
Clerk

March 16,1987

Mr. Gerald C. Grunst
Box 66
Poplar, MT 59255

Dear Mr. Grunst:

As you know, I have been working to achieve an informal resolution to your allegations that you were discriminated against due to your age and your sex in the hiring of a Librarian at the Northern Prairie Wildlife Research Center (NPWTC).

To that end, I have interviewed you,Mr.Dick Walsh, and Mr.Doug Johnson. I conveyed to both alleged discriminating officials (ADO) your allegations and your proposed resolution to the matter; placement as a GS-7 Librarian at NPWRC or a similar position in NM, NV, AZ,MT, ND, SD, WA, OR, WY, CO,... Their response was that there was no discrimination and the sucessful candidate for the Librarian position was selected based solely on qualifications... Mr.Stendell stated that he felt the selection was based solely on

qualifications and that he could not offer you the position you requested in your resolution proposal. No counter offers were made at any time by any of the parties concerned.

At this point I am informing you of your right to file a formal complaint within 15 days of receipt of this letter...

Sincerely
/s/ Jack Hicks
Jack Hicks

Filed 4 Jun 1990
Edward Klecker,Clerk

SETTLEMENT REQUEST

Requests for settlement by the complaintant were made during the negotations(E.E.O.) and the E.E.O. hearing procedings. However,since the defendant seems to request that settlement be based upon a claim on which relief can be granted than my I suggest the following:

1. Immediate employment at either the GS 7/9 or GS 9 1410 Librarian position level
2. Employment must be offered by the Dept. of Interior in the specific state of: Nevada, Arizona,New Mexico, Washington, Oregon, or Montana. These primary states were suggested during E.E.O. negotations.
3. Immediate retroactive back pay from 3 October 1986 to the present.
4. All benefits such as Social Security, retirement and so forth to be paid in retrospect.
5. Immediate carrer status in the Civil Service system for Librarian 1410.
6. All sick leave benefits and leave benefits

to be provided for in retroactive status.

7.Fullfillment of all E.E.O. standards and Government standards when reinstated.

In addition, Please find enclosed negotation papers signed by Mr.Jack Hicks, Department of Interior.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 91-1673ND

Gerald Eugene Grunst,	*	
Appelant,	*	Appeal from the
	*	United States
v.	*	District Court
United States of America;	*	for the District
Manuel Lujan,Jr.,	*	of North Dakota.
Secretary of United	*	
States Department of	*	(UNPUBLISHED)
Interior; United States	*	
Fish & Wildlife Service;	*	
United States Northern	*	
Prairie Wildlife Research	*	
Center, Jamestown, North	*	
Dakota; Director of	*	
Office of Personnel	*	
Management,D.C.,	*	
	*	
Appellees,	*	

Submitted: July 3, 1991

Filed: July 30,1991

Before JOHN R. GIBSON, BOWMAN, AND LOKEN, Circuit Judges.

PER CURIAM.

Gerald Grunst appeals the district court's[1] dismissal of his complaint alleging that he was a victim of age and sex discrimination

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[1] The Honorable Rodney S. Webb, United States District Judge for the District of North Dakota.

when he unsuccessfully applied to be Librarian at the U.S. Department of Interior's Northern Wildlife Research Center in Jamestown, North Dakota. We have carefully reviewed the record and conclude that the district court decision was corrction was correct and that an opinion would have no precedential value. We affirm for reasons stated in the district court's orders. See 8th Cir. R. 47B.

A true copy,

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 91-1673NDF

Gerald Eugene Grunst,	*	Appeal from the
	*	United States
Appellant,	*	District Court
	*	for the District
vs.	*	of North Dakota
	*	
United States of America,	*	
	*	
et al.	*	
	*	
Appellees.	*	

Appellant's petition for rehearing has been considered by the court and is denied.

September 16, 1991

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit